

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 21 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

ROBERTO B.,	)	2 CA-JV 2011-0040
	)	DEPARTMENT A
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY and ADELCHI B.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19353900

Honorable Javier Chon-Lopez, Judge

AFFIRMED

Nuccio & Shirley, P.C.  
By Salvatore Nuccio

Tucson  
Attorneys for Appellant

Thomas C. Horne, Arizona Attorney General  
By Claudia Acosta Collings

Tucson  
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HOWARD, Chief Judge.

¶1 Roberto B., father of Adelci B., born in March 2009, appeals from the juvenile court's order terminating his parental rights to his daughter based on the term of Roberto's incarceration, *see* A.R.S. § 8-533(B)(4), and on Adelci's having been in court-ordered, out-of-home placement for nine months or more, *see* § 8-533(B)(8)(a). For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and, by a preponderance of the evidence, that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took custody of Adelci in February 2010 after Roberto and Adelci's mother were arrested for selling narcotics out of a car, in which Adelci was also present. The court adjudicated Adelci dependent as to both parents after they failed to appear at a hearing in March 2010. Roberto participated in some services offered by

ADES, but was ultimately sentenced to one and a half years' imprisonment after being convicted on charges arising from the drug arrest at which Adelci was taken into custody.

¶4 Thereafter, ADES filed an amended motion to terminate Roberto's parental rights on the ground that he had been convicted of a felony, the sentence for which would deprive Adelci of a normal home for a period of years, § 8-533(B)(4), and on the ground that he had substantially neglected or willfully refused to remedy the circumstances that had caused Adelci to remain in out-of-home care for nine months or longer, § 8-533(B)(8)(a). After a contested termination hearing, the juvenile court concluded ADES had proven both grounds and terminated Roberto's parental rights.

¶5 Roberto maintains that, based on the evidence presented, "[a] reasonable, unprejudiced trier of fact would not have reached the conclusion that [his] actions constituted willful refusal or substantial neglect," and the juvenile court therefore erred in severing his parental rights based on Adelci's having been in court-ordered, out-of-home care for nine months or more. "In considering a claim of insufficient evidence, '[o]ur duty, on appeal, begins and ends with the inquiry whether the . . . court had before it evidence upon which an unprejudiced mind might reasonably have reached the same conclusion.'" *Denise R. v. Ariz. Dep't. of Econ. Sec.*, 221 Ariz. 92, ¶ 6, 210 P.3d 1263, 1265 (App. 2009), *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (alteration in *Denise R.*).

¶6 Section 8-533(B)(8)(a) allows parental rights to be terminated when ADES makes a diligent effort to provide appropriate reunification services, the child has been in

an out-of-home placement for nine months or longer, and the parent has substantially neglected or willfully refused to remedy the circumstances that caused the out-of-home placement.<sup>1</sup> As Roberto argues, “parents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement, even if they cannot completely overcome their difficulties.” *In re Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). But when parents make only “sporadic, aborted attempts to remedy” the circumstances causing the out-of-home placement, a “court is well within its discretion in finding substantial neglect and terminating parental rights on that basis.” *Id.* And, “[t]ermination is not limited to those who have *completely* neglected or willfully refused to remedy” the circumstances that caused out-of-home placement. *Id.* at 576, 869 P.2d at 1229.

¶7 In this case, although Roberto initially made some efforts to comply with his case plan, his case manager testified he had attended his last substance abuse class in May 2010, more than a month before he was incarcerated. There was no record he had attended any parenting classes. And, although Adelci was available at least three times a week, Roberto only attended visitation with her two or three times from April 2010 until his incarceration at the end of June. He also failed to attend child and family team

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<sup>1</sup>Roberto does not separately allege the evidence was insufficient to show ADES had made diligent efforts to provide services or that Adelci was in out-of-home placement for nine months or more.

meetings and case plan staffing. After being incarcerated, he only requested services in the prison after ADES moved to sever his parental rights in October 2010. And, although Roberto testified he was engaged in some services through the Arizona Department of Corrections (ADOC), he did not provide his case manager with any verification he had received services while he was incarcerated. Although Roberto provided some testimony attempting to explain his failure to engage or contradicting his case manager's testimony, his arguments on appeal amount to a request that we reweigh the evidence, which is not a function of this court. *See Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005).

¶8 On the record before us, reasonable evidence supports the juvenile court's detailed findings as to Roberto's failure to obtain parenting instruction or to visit Adelci when he had the opportunity, as well as his efforts to remedy his substance abuse problems, which were sporadic at best. *See Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. at 576, 869 P.2d at 1229 (when parent "makes only sporadic, aborted attempts to remedy her addiction in that first year, . . . court is well within its discretion in finding substantial neglect and terminating parental rights on that basis"). It is also apparent from the court's ruling that, contrary to Roberto's assertions on appeal, it considered not only Roberto's participation in services, but the availability of services as well. It specifically noted ADES's efforts before Roberto's incarceration and that it had alerted him that services were available through ADOC. And, although Roberto argues his failure to engage in services was a result of ADES's failure to continue to provide them

while he was incarcerated,<sup>2</sup> his case manager was not even aware of his location for several months because Roberto failed to stay in contact with him as required. We therefore cannot say Roberto's efforts were any more than "sporadic, aborted attempts to remedy" the situation that had led to Adelci's out-of-home placement, *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. at 576, 869 P.2d at 1229, or that the juvenile court abused its discretion in so finding.

¶9 Because sufficient evidence supports the out-of-home placement ground, we "need not address claims pertaining to the other grounds." *Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205; *see also Michael J.*, 196 Ariz. 246, ¶ 27, 995 P.2d at 687. The judgment of the juvenile court is affirmed.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge

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<sup>2</sup>Roberto also alleges on appeal that his case manager could not "recall having spoken with [his] correction officer." But, the case manager testified he had talked to "CO-3s" at the prison where Roberto was incarcerated "on several occasions."